



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 10, 1994

Ms. Cathy Cunningham
Senior Assistant City Attorney
City of Irving
P.O. Box 152288
Irving, Texas 75015-2288

OR94-119

Dear Ms. Cunningham:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (formerly V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 21926.

The City of Irving (the "city") has received an open records request for, among other things, "[a]ny and all documentation relating to consumer complaints regarding Food Lion supermarkets." You state that you have released to the requestor all of the requested information, but that you have withheld the names, addresses, and telephone numbers of complainants of violations. You seek to withhold this information pursuant to the informer's privilege as incorporated into section 552.101 of the Government Code.

For information to come under the protection of the informer's privilege, the information must relate to a violation of a civil or criminal statute. *See* Open Records Decision Nos. 515 (1988) at 2-5; 391 (1983). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of *violations of law to officers charged with enforcement of that law*. [Citations omitted.] The

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law enforcement officials and, *by preserving their anonymity*, encourages them to perform that obligation. [Emphasis added.]

Although the "informer's privilege" aspect of section 552.101 ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 285 at 1, 279 at 1-2 (1981); *see also* Open Records Decision No. 208 (1978) at 1-2. In this instance, the complainants appear to be reporting potential violations of one or more city health ordinances that the city is responsible for enforcing.² Accordingly, the city may withhold the complainants' identities, home addresses, and telephone numbers pursuant to the informer's privilege.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kymberly K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/LBC/rho

Ref.: ID# 21926

Enclosures: Submitted documents

cc: Mr. Keith Mestrich
Consumers United with Employees
2020 Pennsylvania Avenue, N.W., Suite 421
Washington, DC 20006
(w/o enclosures)

²We caution the city that it is not always apparent to this office whether or not the information submitted for our review relates to violations of civil or criminal statutes. When requesting a decision from this office, it is in the city's best interest to indicate the ordinance or statute to which the allegations relate even though the violation may be apparent as in this case.